91-385

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FILED
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

DONALD G. PAUTZ,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DONALD G. PAUTZ
Route 1, Box 312
Centuria, Wisconsin 54824
1-715-825-4265

QUESTIONS PRESENTED FOR REVIEW

1. Whether the UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE can be granted a claim against real estate within a state?

2. Whether the UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE can proceed in the judicial system even though they filed their brief 5 days late, when the court specifically ordered that there is no allowance time for mailing when they had filed for an extension of time.

3. Whether the court is responsible to hold less stringent standards for pro se litigants than those of the legal profession and to allow the pro se litigant opportunity to present supporting evidence in the case at bar?

4. Whether it is the duty of the courts to see that the United States Constitution is upheld as the supreme law of the land and to gaurd against any abridgments there of?

5. Whether the UNITED STATES OF AMERICA, can seize a property that is the petitioner's main home?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

DONALD G. PAUTZ,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Donald G. Pautz, respectfully prays that a writ of certiorari issue to review the judgment of the United States

Court of Appeals for the Seventh Circuit entered on 11 June 1991.

OPINION BELOW

The Court of Appeals entered its decision that the judgment of the United States District Court for the Western District of Wisconsin in this cause appealed from be, and the same is hereby affirmed, with costs in accordance with the order of this court entered 11 June 1991. A copy of the decision is Appendix A. A copy of the order is Appendix B.

JURISDICTION

The judgment sought to be reviewed was entered on 11 June 1991. The Court of Appeals affirmed an order of the district court ordering foreclosure of property alleged to be owned by Mr. Pautz to satisfy a portion of his tax assessment. The jurisdiction of this court is involked under Title 28, Section 1254(1).[1]

1/ No other petitioner is involved in this Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article III, Section 2:

> The judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution, the Laws of the United States.....
>
> also, paragraph 2:
>
> In all other Cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.
>
> also, paragraph 3:
>
> The trial of all Crimes, except in Cases of Impeachment, shall be by jury:....

United States Constitution, Article VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Article I, Section 8, Clause 17:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all

> Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dockyards and other needful Buildings;...

United States Constitution, Amendent VII:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

United States Constitution, Amendment XIV, Section I:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The underlying district court proceeding involves an attempt by the Internal Revenue Service (hereinafter, the plaintiff) to assign alleged tax assessments to Donald G. Pautz, (hereinafter, the defendant) a named defendant

in this case at bar. The plaintiff seeks to reduce to judgment those assessments.

The district court, in spite of numerous irregularities in procedure- such as ignoring significant portions of the defendant's pleadings- is sympathetic to the suggestions and pleadings of the plaintiff. The court also allowed the plaintiff to delay and not participate in the discovery process.

The defendant filed a Motion of Dismiss on December 8, 1989 that was not ruled on for 137 days. The plaintiff filed a Motion for Summary Judgment on March 13, 1990. On April 23, 1990 the Court entered an order denying the defendant's Motion to Dismiss and granting the plaintiff's Motion for Summary Judgment.

After the courts ruling on the defendant's Motion to Dismiss, the defendant filed his Answer to the plaintiff's Complaint in accordance with 28 U.S.C. 12(a)(1). The court ignored the defendant's Answer.

Judgment was entered on April 26, 1990 in favor of the plaintiff, and named defendant,

Donald G. Pautz, appealed.

The defendant appealed the decision of the United States District Court to the United States Court of Appeals for the Seventh Circuit.

The Court of Appeals decision of June 11, 1991 affirmed the order of the District Court ordering foreclousure of property, claimed to be owned by Mr. Pautz, to satisfy a portion of his tax assessment.

Federal Questions Raised

On 23 January 1991, Petitioner filed MEMORANDUM OF LAW To Accompany Motion to Dismiss, a copy is attached and labeled as Appendix C.

The MEMORANDUM OF LAW states that a claim can not be granted against any real estate within a state unless it is purchased with the consent of the state legislature, pursuant to the United States Constitution, Article I, Section 8, Clause 17, and if land is purchased it can only be used " . . . for the Erection of Forts, Magazines, Arsenals, dock-yards,

and other needful Buildings."

Furthermore, the petitioner expressed that a claim can not be granted to the United States of America, Internal Revenue Service (hereinafter, respondent) against any real estate within a state in his brief to the U.S. Court of Appeals for the Seventh Circuit at pages 4-6, a copy is attached and labeled as appendix D.

Hence, the statutory jurisdiction district Judge Shabaz refers to applies to the "District" and "all places purchased by the Consent of the legislature of the State in Which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings;" Therefore, the statutory jurisdiction the judge refers to does not apply to real estate within a state. Therefore, the petitioners Motion To Dismiss for failure to state a claim upon which relief can be granted can not possibly be denied.

Basis for Federal Jurisdiction

Federal jurisdiction is required because the lower courts have not yet given the pro se petitioner correct consideration as required bythe Supreme Court decision in Haines v. Kerner, 404 US 519 (1972).

The district court in its order of April 24, 1990, stated it would subject the petitioner to less stringent statdards and contends that it liberally construes pleadings of **pro se** Litigants according to Haines v. Kerner, 404 US 519 (1972). However, in practice the district court did not reflect a subjection of the petitioner to less stringent standards as claimed, but reflects rather that petitioner has not been given fair and just consideration to see that essential justice prevail.

The Court of Appeals in its order of 11 June 1991, states that the petitioner did not answer the complaint, but rather filed a Motion to Dismiss. FRCP 12(a)(1) states that a party has 10 days to answer the complaint

after the disposition of a dispositive motion such as a motion to dismiss is ruled upon.

Now why did not the court accept the pro se petitioners answer. The petitioner, reading FRCP 12(a)(1) believes he had 10 days after the disposition of the dispositive motion to dismiss to answer the complaint. Where are the less stringent standards to be applied to pro se litigants as required by Haines v. Kerner, 404 US 519 (1972)? The pro se litigant did not even know that court rules supersede one another, let alone that a motion of summary judgment apparently cancels out FRCP 12(a)(1). When are the less stringent standards applied to pro se litigants, where is the justice?

How can the Court of Appeals in its order of 11 June 1991 state that "Mr. Pautz likewise fails to support his argument that the district court failed to assist him with discovery disputes with the government." Are they not able to read and see evidnece in the defendant-Petitioners brief, Supp. App. pp.24 and 25,

how the government stalled their answers dispite repeated phone calls andletters and then respond 76 days later with incomplete, vague, and ambiguous answers. The jurisdiction of this court is required to set matters straight, at least truthful.

Further jurisdiction of this court is required because the respondent has not yet served the "Don Pautz Family Trust" itself. The only people served were people associated with the trust in the past. All of their answers to respondents interrogatories are in the past tense. The Internal Revenue is well aware of the fact that people they served are no longer associated with the "Don Pautz Family Trust", as they received a certified letter stating so. Why not let the trust entity itself respond, would not that be proper in as much as it is listed as a party the the action?

The Court of Appeals order of 11 June 1991 does not address the fact that the respondent filed their brief for the appellee

(respondent) 5 days late. No evidence to the contrary has been presented. See petioners Motion to Strike, Appendix E with exhibits 1 and 2. Also please see Appellant's Memorandum of Law in Support of its Motion to Strike, Appendix F with exhibits 1 and 2, and also please see Appellant's Objection to Denial of Appellant's Motion to Strike and Motion for Reversal, Appendix G with exhibits 1-3. What a pity that the government (respondent) can violate specific court orders and continue right along as though they are on time. The above mentioned situation requires the supervisory jurisdiction of the supreme court.

REASONS FOR GRANTING THE WRIT

When a federal court of appeals has departed from the usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, due process calls for an exercise of this court's power of supervision.

The cause of action in this case at bar

is that the respondent seeks to foreclose on real estate property allegedly owned by the petitioner to reduce to judgment income tax assessments made against the petitioner.

The property in question is currently owned by the Don Pautz Family Trust, yet the entity of the trust has not yet been served the complaint even though it is a party to the action. It is appropriate that the trust be served the complaint in as much as it is a party to the action. Supreme court supervisory action is required to straighten this out.

This writ should also be granted because the petitioner is proceeding pro se and has not been afforded fair consideration of his motions and pleadings as required by Haines v. Kerner, 404 U.S. 519 (1972).

Furthermore, the petitioner should not even be litigating as that is properly the duty of the trust, it it would only be properly served.

The courts supervisory power is also required because Article I, Section 8, Clause

17 of the U.S. Constitution states that a claim can not be granted against any real estate within a state unless it is first purchased by the state legislature, then the property used only for the purposes stated in clause 17.

The subject property of this legal action, is the main home of the petitioner and is not subject to seizures in accordance with the Internal Revenue Code. The supervisory power of the supreme court is required to keep the Internal Revenue Service within the guidelines of its code.

Still another reason the court should exercise its supervisory power is to see that essential justice is done as required by FRCP 8(f):

"(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice."

Finally, it is noted that the pro se petitioner is not skilled in the science of law, but is only seeking that his constitutional rights are afforded him and that justice be

done. The pleadings, however in artfully done are to be considered so as to do essential justice. Haines v. Kerner, 404 U.S. 519, Conley v. Gibson, 355 U.S. 41, Dioguardi v. Durning, 139 F 2nd 774.

CONCLUSION

For the foregoing reasons, petitioner, Donald G Pautz, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit and pass upon the constitutional provisions involved and to examine the unjust treatment of the pro se petitioner.

Dated: September 3, 1990.

Respectfully Submitted,

Donald G. Pautz
Petitioner, pro se
Route 1, Box 312
Centuria, Wisconsin
54824

CERTIFICATE OF SERVICE

I hereby certify that three true and correct Copies of the foregoing instrument were forwarded in the U.S. Mail, Certified No. P 308 600 073, postage prepaid, to Gary R. Allen, Charles E. Brookhart, and Randolph L. Hutter, Attorneys, Tax Division, Department of Justice, Post Office Box 502, Washington, D.C. 20044 this 5th day of September, 1990.

Donald G. Pautz

Appendix A

OPINION OF THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DONALD G. PAUTZ,
Defendant-Appellant.

No. 90-2347

United States Court of Appeals,
Seventh Circuit.

June 11, 1991

This cause came before the Court for decision on the record from the above mentioned district court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

ORDER OF THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DONALD G. PAUTZ,
Defendant-Appellant.

No. 90-2347

United States Court of Appeals,
Seventh Circuit.

June 11, 1991

The United States filed this suit in the federal district court seeking to reduce to judgment a $166,000 income tax assessment against Donald G. Pautz for the years 1980-82 and 1985. The government sought to foreclose on a parcel of real estate Mr. Pautz allegedly owned; Mr. Pautz claimed that the real estate was actually owned by the "Don Pautz Family Trust" and that the government could not properly foreclose on the property to satisfy the tax judgment.

During 1075 and 1976, Mr. Pautz purchased two tracts of land totalling 39 acres as a joint tenant with his wife, Kate Dee Pautz,

from Robert Hansen and his wife. On March 19, 1979, Mrs. Pautz quitclaimed her interest in the property to Mr. Pautz who in turn transferred it to Mrs. Pautz and Robert Hansen as trustees of the Don Pautz Family Trust. Both deeds were recorded on March 19th. An unrecorded "Declaration of Trust" named Mrs. Pautz and Robert Hansen as trustees and gave them "all the powers necessary ... . to effectuate the purposes of the Trust." The purpose of the trust was "to sustain, protect and improve th(e) Trust Organization" and "to use th(e) Trust Organization as a plan for the achievement and improvement of a Life Purpose." The document did not name any beneficiaries.

On August 6, 1985, Mrs. Pautz and Robert Hansen conveyed the property by quitclaim deed to the Don Pautz Family Trust. This deed and a copy of the 1979 trust document were both recorded on August 6th.

In its motion for summary judgment, the government attached copies of the recorded deeds and the trust document. The government

argued that trust was invalid under state law and that the purported transfer of the property to the trust was ineffective. In the alternative, the government argued that even if the trust was effective, the property was transferred fraudulently in an attempt to defeat the government's tax assessment. Mr. Pautz responded with an affidavit in which he stated without support, that material issues of fact existed on the issues of whether the trust was a sham and whether the property was fraudulently transferred.

The district court denied Mr. Pautz' motion to dismiss and granted the government's motion for summary judgment. The court held that the Don Pautz Family Trust was not "a legally recognizable entity" under Wisconsin law and that the property in question belonged to Mr. Pautz. The court therefore concluded that the property was subject to foreclosure for payment of his income tax assessments.

II.

Mr. Pautz first argues on appeal that the

federal government does not have jurisdiction to order the foreclosure of the property in question because the state legislature has not yet purchased the property. This argument, based on article 1, section8, paragraph 17 provides for congressional legislative power over the District of Columbia and federal enclaves. This section, however, does not bar the federal government from foreclosing a tax lien on property outside of the national capital or federal enclaves. The Constitution explicitly provides the federal government with the power to lay and collect taxes. See U.S. Const. art. 1, section 8, paragraph 1 ("Congress shall have Power To lay and Collect Taxes"); U.S. Const. amend. XVI ("Congress shall have power to lay and collect taxes on incomes"). Congress, in turn, has provided jurisdiction to the federal courts to enforce tax judgments and liens. 26 U.S.C. sections 7402 & 7403. Nothing more is required.

Appellant also claims that he was prejudiced by the district court judge's handling

of his case. The government filed its complaint in this case on November 16, 1989. Pautz did not file an answer, instead he filed a motion to dismiss on December 7, 1989. The government did not respond to Pautz' motion, and the court did not act on the motion right away. On March 13, 1990, the government filed a motion for summary judgment. Pautz filed a reply, and the court ruled on both his motion and the government's on April 26, 1990. Pautz claims that the 137-day delay in ruling on his motion to dismiss was "very irregular and unjust," but he does not support this argument by explaining how his interests were affected by the court's action.[1]

Pautz also claims that he had the right under Fed. R. Civ. P. 12(a)(1) to file an answer to the government's complaint once the district court ruled on his motion to dismiss. Since

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[1]Mr. Pautz likewise fails to support his argument that the district court failed to assist him with discovery disputes with the government. Although he claims to have been denied important documents that he needed to defend his case, he does not allude to the nature of the documents or how they would have assisted his defense.

there was a pending motion for summary judgment, however, the filing of the answer became irrelevant. Pautz had the duty under Fed. R. Civ. P. 56(e) to respond to a properly filed and supported motion for summary judgment by submitting evidence in addition to his complaint, his answer, or any other pleadings. United Ass'n of Black Landscapers v. City of Milwaukee, 916 F.2d 1261, 1265 (7th Cir. 1990). Although Pautz claims that "private trust documents" exist that reveal pertinent information about the family trust-- like the names of its beneficiaries--he failed to present these documents to the court when he was explicityly notified of his duty to respond to the government's motion for summary judgment.[2] Thus, Mr. Pautz failed to meet his burden of proof at the summary judgment stage.

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[2]Mr. Pautz seems to suggest that these documents were not presented to the court because the government failed properly to serve the trust as a separate party. Although this contention is not supported by the record, even if the trust were not properly served, Mr. Pautz was served and was independently responsible for protecting his interests at the summary judgment

(continued...)

Finally, Mr. Pautz claims that the taxes assessed against him were inflated and inaccurate. The district court held that Mr. Pautz failed to provide "cogent objections" to the assessment, but, on appeal, Mr. Pautz argues that the 1985 assessment was 14 times higher than it should have been and that government committed fraud in calculating his back taxes. Issues raised for the first time on appeal are waived. Consolidated Bearings Co. V. Ehret-Krohn Corp., 913 F. 2d 1224, 1232 n.9 (7th Cir. 1990). It appears from the record that Mr. Pautz failed to raise these arguments in the district court. Even if he had, however, Mr. Pautz cannot collaterally attach the judgment of the Tax Court that assessed his 1980-82 tax liability--his remedy would be to appeal the Tax Court's judgment on the merits. See, e.g., Federated

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2 (...continued)
stage of the lawsuit. His failure to provide these documents (which presumably are in his possession or readily available to him) to rebut the government's arguments resulted in summary judgment being entered against him.

Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398-99 (1981). As for his 1985 assessment, Mr. Pautz bore the burden of proving that this presumptively accurate tax assessment was incorrect, see Ruth v. United States, 823 F. 2d 1091, 1093 (7th Cir. 1987) (once government introduces assessment burden shifts to taxpayer to show error), and he failed to offer any evidence of inaccuracy or fraud.

III.

In sum, the decision of the district court ordering foreclosure of Mr. Pautz' property to satisfy a protion of his tax assessment is

AFFIRMED.

Appendix C

MEMORANDUM OF LAW

To Accompany Motion to Dismiss

UNITED STATES OF AMERICA,
Plaintiff,

v.

DONALD G. PAUTZ
Defendant.

No. 89-C-1019-S

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

January 23, 1990

Comes now the so named defendant, Donald G. Pautz and shows to the court the following:

1. A calim can not be granted against any real estate within a state unless it is purchased with the consent of the state legislature, pursuant to the United States Constitution, Article I, Section 8, Clause 17, and it can only be ". . . for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings."

I

The statement above is supported by the Supreme Court decision in the case of LANE

COUNTY v. OREGON, 7 WALL 71, in which the court stated that " . . . the independent authority of the states is distinctly recognized." "To them nearly the whole charge of interior regulation is committed or left; to them and to the people, all powers not expressely delegated to the national government are reserved."

II

Statement No. 1, is further supported by the Supreme Court decision in the case of POLLARD'S LESSEE v. HAGAN et al., 3 HOWARD (US) 212 where the Supreme Court made the following observations at page 221: "We think a proper examination of this subject will show, that the United States never held any municipal sovereighty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new states were formed; . . ."

III

The Supreme Court went on to state on page 229: "Then to Alabama belong the navigable waters, and soils under them, in

controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights."

IV

The above cases are further supported by Wisconsin Statutes 1.01 and 1.02 which state that the state of Wisconsin has exclusive sovereignty and jurisdiction over all land within the state, subject to that which the legislature consents to aquisition by the United States for the erection of forts, arsenals, court houses, post offices, etc., as contemplated by the 17th clause of Section 8 of article 1 of the United States Constitution. The property that the plaintiff is seeking to foreclose on does not fall within the above outlined exceptions.

V

2. In June of 1985, the so named defendant, by certified mail No.'s P 604 204 674, P 604 204 671, requested that the Plaintiff prove

the alleged jurisdiction over the so named defendant. The plaintiff has not yet proved the alleged jurisdiction over the so named defendant and proof of jurisdiction, when demanded, can not be assumed, it must be proved on the record. The jurisdictional issue is considered by the Supreme Court in these cases: FMC Seatrain Lines, Inc., 411 U.S. 726 Owens v. City of Independence, Mo., 100 SCT 1398, Interstate Commerce Commission v. Brimson, 154 U.S. 447, McNutt v. General Notors, 298 U.S. 189, Thompson v. Gaskill, 315 U.S. 673, Latana v. Hopper, 102 F 2d 116, Hagnas v. LaVine, 415 U.S. 528.

VI

Whereas the property that the plaintiff is seeking to foreclose on does not fall within the exceptions listed in statement 1 and paragraphs I, II, and III, and also that the plaintiff has failed to prove jurisdiction, when demanded to do so by the so named defendant, then this court lacks personal and subject matter jurisdiction and can not grant

the relief that the plaintiff is seeking. Therefore, the complaint fails to state a claim in which relief can be granted.

Dated this 23rd day of January, 1990.

Respectfully submitted,

Donald G. Pautz
P.O. Box 149
Chisago City, MN 55013

Appendix D

BRIEF OF DEFENDANT-APPELLANT
DONALD G. PAUTZ

UNITED STATES OF AMERICA
Plaintiff,

v.
DONALD G. PAUTZ
Defendant.

No. 89-C-1019-S

IN THE UNITED STATED DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
April 28, 1990

ARGUMENT

A. The District Court Does Not Have Jurisdiction To Grant A Claim Against Real Estate Within A State Within The Meaning Of Article I, Section 8, Clause 17 Of The United States Constitution.

The district court does not have subject matter jurisdiction under 28 U.S.C. sections 1345 and 26 U.S.C. section 7402 as district court Judge Shabaz suggests in his order of April 23, 1990 (Supp. Appl, pp. 1-7). Rather, Article I, Section 8, Clause 17 of the United States Constitution states that the power given "To exercise exclusive Legislation in

all Cases whatsoever . . ." is only "over such District" and ". . . over all places purchased by the consent of the Legislature of the State . . .". Here is the complete quote from Article I, Section 8, Clause 17, for clarification:

> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Ports, Magazines, Arsenals, dockyards and other needful Buildings;"

Furthermore, a claim can not be granted against any real estate within a state unless it is purchased with the consent of the state legislature, pursuant to the United States Constitution, Article I, Section 8, Clause 17, and it can only be". . . for the Erection of Forsts, Magazines, Arsenals, Dock-yards, and other needful Buildings."

The statement above is supported by the Supreme Court decision in the case of LANE COUNTY v. OREGON, 7 WALL 71, p. 76, in which

the court stated that ". . . the independent authority of the states is distinctly recognized." "To them nearly the whole charge of interior regulation is committed or left; to them and to the people, all powers not expressly delegated to the national govenment are reserved.

Statement No. 1, is further supported by the Supreme Court decision in the case of POLLARD'S LESSEE v. HAGAN et al., 3 HOWARD (US) 212 where the Supreme Court made the following observations at page 221: "We think a proper examination of this subject will show, that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new states were formed; . . ."

The Supreme Court went on to state on page 229: "Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made be-

tween her and the United States could diminish or enlarge these rights."

The above cases are further supported by Wisconsin Statutes 1.01 and 1.02 which state that the state of Wisconsin has exclusive sovereignty and jurisdiction over all land within the state, subject to that which the legislature consents to acquisition by the United States for the erection of forts, arsenals, court houses, post offices, etc., as contemplated by the 17th clause of Section 8 of article 1 of the United States Constitution. The property that the plaintiff is seeeking to foreclose on does not fall within the above outlined exceptions.

Hence, the statutory jurisdiction Judge Shabaz refers to applies to the "District" and "all places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings;" Therefore, the statutory jurisdiction the Judge refers to does <u>not</u> apply to real

estate within a state. Therefore, the defendant's Motion to dismiss (Supp. App., pp. 8-12) for failure to state a claim upon which relief can be granted can not possibly be denied.

Appendix E

MOTION TO STRIKE

UNITED STATES OF AMERICA
Plaintiff,

v.
DONALD G. PAUTZ
Defendant.

No. 89-C-1019-S

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
November 16, 1990

Appellant moves for the entry of an order striking the brief of the appellee on the grounds that it was not filed timely. The following statements show how the brief of the appellee was filed late:

1. The United States Court of Appeals for the Seventh circuit ordered the brief of the appellee to be due on or before 10/31/90. See exhibit 1.

2. The briefing schedule set by court order states specifically that additional time for mailing is not allowed, and all briefs are due by the dates ordered. See exhibit 1.

3. The appellee filed it's brief on November 5, 1990, 5 days past the allowable

time period of October 31, 1990. See exhibit 2.

Appellant further moves for the entry of an order reversing the district court decision in favor of the defendant.

Dated: November 16, 1990.

Respectfully submitted,

Donald G. Pautz
P.O. Box 149
Chisago City, MN 55013

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Dated: September 26,1990

By the Court:

No. 90-2347

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

DONALD G. PAUTZ,
Defendant - Appellant

Appeal from the United States District Court for the Western District of Wisconsin, 120 N. Henry Street No. 89 C 1019, Judge John C. Shabaz

On consideration of the motion for extension of time filed by the appellee on 9/25/90,

IT IS ORDERED that the following new brief-schedule is adopted for this appeal:

1. The brief of the appellee shall be due on or before 10/31/90.

2. The reply brief of the appellant, if any, shall be due on or before 11/14/90.

NOTE: The parties are advised that Rule 26(c), Federal Rules of Appellate Procedure, which allows three additional days after service by mail, shall not apply when the due dates are specifically set by order of this court. All briefs are due by the dates ordered.

Exhibit 1

No. 90-2347

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

DONALD G. PAUTZ,
Defendant-Appellant

ON APPEAL FROM THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIEF FOR THE APPELLEE

USCA7th Circuit
FILED
NOV -5 1990
Thomas F. Strubbe
CLERK

SHIRLEY D. PETERSON
Assistant Attorney General

GARY R. ALLEN FTS 368-3361
CHARLES E. BROOKHART FTS 368-3564
RANDOLPH L. HUTTER FTS 368-2647
Attorneys
Tax Division
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Post Office Box 502
Washington, D.C. 20044

Of Counsel:

PATRICK J. FIEDLER
United states Attorney

CERTIFIED COPY
A True Copy
Tested seal

Clerk of the United States Court of Appeals for the Seventh Circuit.

Exhibit 2

Appendix F

APPELLANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO STRIKE

UNITED STATES OF AMERICA,
Plaintiff,

v.

DONALD G. PAUTZ
Defendant.

No. 89-C-1019-S

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

November 16, 1990

It is the Appellant's position that based on the record and evidence presented that the Appellee's brief was filed late and that the court must strike the brief and issue an order reversing the district court decision in favor of the Defendant (Appellant).

QUESTION PRESENTED

1. Was the Appellee's brief on time?

FACTS

1. The Appellee filed a motion for extension of time on 9/25/90.

2. On September 26, 1990, the Court of Appeals ordered a briefing schedule with the brief of the Appellee due on or before October

31,1990. See exhibit 1.

3. The September 26, 1990, briefing schedule ordered by the court stated specifically that "The parties are advised that Rule 26(c), Federal Rules of Appellate Procedure, which allows for three additional days after service by mail, shall not apply when the due dates of briefs are specifically set by order of this court. All Briefs are due by the due dates ordered." See exhibit 1.

4. On November 5, 1990. the Appellee filed its brief. See exhibit 2. The Appellee's brief was filed five days past the due date ordered by the Court of Appeals. See Exhibit 2.

DISCUSSION

It is clear and simple to see that the Appellee's brief was filed five days past the due date ordered by the Court of Appeals. Therefore, Appellee's brief is null and viod.

CONCLUSION

Appellant's motion to strike should be granted and the court of appeals should enter an order reversing the District Court decision

in favor of the Appellant (defendant).

Dated November 16, 1990.

Respectfully submitted,

_____

Donald G. Pautz
P.O. Box 149
Chisago City, MN 55013

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Dated: September 26,1990

By the Court:

No. 90-2347

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

DONALD G. PAUTZ,
Defendant - Appellant

Appeal from the United States District Court for the Western District of Wisconsin, 120 N. Henry Street No. 89 C 1019, Judge John C. Shabaz

On consideration of the motion for extension of time filed by the appellee on 9/25/90,

IT IS ORDERED that the following new brief-schedule is adopted for this appeal:

1. The brief of the appellee shall be due on or before 10/31/90.

2. The reply brief of the appellant, if any, shall be due on or before 11/14/90.

NOTE: The parties are advised that Rule 26(c), Federal Rules of Appellate Procedure, which allows three additional days after service by mail, shall not apply when the due dates are specifically set by order of this court. All briefs are due by the dates ordered.

Exhibit 1

F-5

No. 90-2347

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

DONALD G. PAUTZ,
Defendant-Appellant

ON APPEAL FROM THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIEF FOR THE APPELLEE

USCA7th Circuit
FILED
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Thomas F. Strubbe
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Of Counsel:

PATRICK J. FIEDLER
United states Attorney

CERTIFIED COPY
A True Copy
Tested seal

Clerk of the United States Court of Appeals for the Seventh Circuit.

Exhibit 2

Appendix G

APPELLANT'S OBJECTION TO DENIAL OF APPELLANT'S MOTION TO STRIKE AND MOTION FOR REVERSAL

UNITED STATES OF AMERICA
Plaintiff,

v.
DONALD G. PAUTZ
Defendant.

No. 89-C-1019-S

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

December 3, 1990

Comes now Appellant, Donald G. Pautz, who objects to the courts denial of his Motion to Strike, Motion for Reversal, and unreasonable reply brief response time and show to the court as follows:

1. The appellee's brief was due on or before 10/31/90, with no additional time for mailing allowed. See exhibit 1.
2. The court prematurely ruled upon Appellant's Motion to Strike and identified Motion for Reversal because upon filing these motions, Exhibit 2, could not be forwarded to the court until Appellant received requested certified copy, from the clerk of the Court

of Appeals, of the front page of Appellee's brief showing the filing date to be labeled as exhibit 2.

3. Appellee's brief was filed by the court on 11/5/90, 5 days late, see Exhibit 2.

4. The cover letter accompanying the Appellee's brief is dated 10/31/90 as shown on Exhibit 3. It is not possible for the cover letter to be written on 10/31/90 and sent with the briefs on 10/31/90 from Washington D.C. and arrive in Chicago, Ill., the same day in the mail. It would take at least 1 to 3 days. Schedule set by the Court of Appeals states that no mailing time is allowed anyway, see Exhibit 1.

5. Service to the parties and the court is to be simultaneously done. If the Appellee's brief was simultaneously mailed to the court and parties, why is it that the Appellant did not receive his copies by mail until 11/7/90, 7 days past due?

6. When challenged, it is the responsibility of the Appellee, not the court, to prove

that their brief was filed on time.

7. No evidence has been presented to the Appellant to prove the allegation that the Appellee's brief was received and filed on or before 10/31/90.

8. The Appellant received the Appellee's brief 11/7/90. The schedule set by the Court of Appeals, See exhibit 1, required the Appellee's brief due on or before 10/31/90, with the Appellant's reply brief due 11/14/90, no mailing time allowed, per Exhibit 1. Now, it is unreasonable to expect the appellant to have his reply brief in on or before 11/14/90, particularily in that Appellee's brief is not timely and therefore the Appellant's brief is unchallenged and there is no need for a reply brief. Appellant would have to send his reply brief on 11/10/90 or 11/11/90 to arrive by the 11/14/90 due date. This timetable allows the pro se Appellant only 3 to 4 days to examine, research, compose and return mail his reply brief. This

timetable is both unreasonable and unjust.

9. Appellant sent a request for a certified copy of the front page of the Appellee's brief by express mail which was received by the office of the clerk of courts on 11/29/90. The Appellant did not receive the prepaid certified copy requested until 3 inquiry phone calls on 11/29/90, 20 days later. What's going on? What was the delay?

10. Nothing shows, suggests, or proves that the Appellee's brief was filed on time, not the date on the cover letter, 10/31/90, not the filing date on the Appellee's brief, 11/5/90, and certainly not the date that the Appellant received his copies of the Appellee's brief 11/7/90.

Therefore, for the above reasons, the Appellant hereby objects and requests reconsideration of the courts denial of his Motion to Strike, Motion for Reversal, and the unreasonable reply brief time allotment because of the Appellee's not getting their brief to

the Appellant until 11/7/90. This is clearly unreasonable and unjust.

Dated: December 3, 1990.

Respectfully submitted,

Donald G. Pautz
Appellant, pro se
P.O. Box 149
Chisago City, MN 55013

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Dated: September 26,1990

By the Court:

No. 90-2347

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

DONALD G. PAUTZ,
Defendant - Appellant

Appeal from the United States District Court for the Western District of Wisconsin, 120 N. Henry Street No. 89 C 1019, Judge John C. Shabaz

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Exhibit 1

G-7

No. 90-2347

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

DONALD G. PAUTZ,
Defendant-Appellant

ON APPEAL FROM THE JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIEF FOR THE APPELLEE

USCA7th Circuit
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Of Counsel:

PATRICK J. FIEDLER
United states Attorney

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A True Copy
Tested seal

Clerk of the United States Court of Appeals for the Seventh Circuit.

Exhibit 2

U.S. DEPARTMENT OF JUSTICE

TAX DIVISION

SDP:GRA:RLHutter:pms
5-86-1925
CMN 8963038

October 31, 1990

Thomas F. Strubbe, Esquire
Clerk, U.S. Court of Appeals
for the Seventh Circuit
Room 2722, U.S. Courts Building
219 South Dearborn Street
Chicago, Illinois 60604

Re: United States v. Donald G. Pautz
(7th Cir. - No. 90-2347)

Dear Mr. Strubbe:

We are transmitting herewith for filing with your court fifteen copies of the brief on behalf of the Appellee in the above-entitled case. This case is currently assigned to Randolph L. Hutter of this office, who may be reached at (202) 514-2647 or FTS 368-2647.

We are forwarding four additional copies to Appellant appearing pro se, together with a copy of this letter. We are also enclosing appearance forms entering additional appearances.

Sincerely yours,

SHIRLEY D. PETERSON
Assistant Attorney General
Tax Division

Gary R. Allen
By: GARY R. ALLEN
Chief, Appellate Section
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044
(202) 514-3361 or FTS 368-3361

Enclosures

cc: (see Page 2)

Exhibit 3